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FRESNO COUNTY SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF FRESNO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF FRESNO, a trial court of the
State of California,

Plaintiff,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 521, and Does 1 through
100, inclusive,

Defendant.

Case No. **19CECG00210**

COMPLAINT OF SUPERIOR COURT OF
CALIFORNIA, COUNTY OF FRESNO FOR
TEMPORARY RESTRAINING ORDER
AND INJUNCTIVE RELIEF BASED UPON
AN UNLAWFUL STRIKE UNDER THE
COMMON LAW.

Date: January 18, 2019
Time: 1:30 p.m.
Dept.: 401 (Sisk Courthouse)

Now comes the SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
("Court" or "Plaintiff") and alleges as follows:

1. The Court is a trial court of the State of California and an employer under the
Trial Court Employment Protection and Governance Act, codified as California Government
Code sections 71600, *et. seq.* The Court employs approximately four hundred and twenty-three
(423) employees (excluding judges and commissioners).

2. Defendant Service Employees International Union, Local 521 ("Union" or
"Defendant") is the exclusive labor representative of Court employees in two Bargaining Units
with the following compositions: Unit 6: Court Office Assistant I, II and III, Court Account

1 Clerk I, II and III, and Judicial Assistant I and II; Unit 15: Court Reporter, Child Recommending
2 Counselors, and Senior Child Recommending Counselors. There are two hundred and eighty-three
3 (283) employees in classifications represented by the Union. Bargaining Unit 15 includes thirty-
4 five (35) certified court reporters.

5 3. The true names and capacities of Does 1 through 100 are unknown to Plaintiff at
6 this time, who therefore sues said Defendants under said fictitious names. At such time as the
7 true names and capacities of said fictitious Doe Defendants are ascertained, Plaintiff will amend
8 this Complaint to reflect such true names and capacities. Plaintiff is informed and believes, and
9 based thereon alleges, that each of said fictitious Doe Defendants has engaged or will engage in
10 the conduct described below and that at all times mentioned herein was an agent of Defendant.

11 4. The Court and Union entered into *Memoranda of Understanding* ("MOU")
12 governing the terms and conditions of employment of the above-described classifications. The
13 term of these MOUs was September 30, 2016 to September 30, 2018. On or about July 17,
14 2018, the Court and the Union began negotiations for successor labor agreements. The parties
15 held ten (10) meet and confer sessions, with the last one occurring on October 11, 2018. On
16 November 19, 2018, the Court and the Union held a mediation session, and reached an overall
17 Tentative Agreement on wages, hours, and other terms and conditions of employment. The
18 Court subsequently learned that the Tentative Agreement was not ratified by the Union
19 membership. On January 10, 2019, the Court and the Union attended a second mediation session
20 and were unable to reach agreement on a new contract. At the conclusion of the mediation, the
21 Union gave the Court written notice of its intent to strike "no sooner than January 15, 2019."

22 5. Between January 11 and January 14, 2019, counsel for the Court and counsel for
23 the Union negotiated an agreement under which the Union committed to provide eight (8)
24 Union-represented, certified court reporter employees of the Court to work during any work
25 stoppage or strike occurring on or between January 15, 2019 and February 15, 2019. (This
26 number is reduced by one court reporter for every contractor reporter the Court may secure to
27 work during the strike.) Their services are necessary for the Court to provide essential services
28

1 to the public consistent with legal requirements. The Court and the Union executed the
2 Agreement on January 13, 2019.

3 6. On January 15, 2019, the Union commenced a strike against the Court. On
4 January 15 and each work day since, only approximately 45% of the Court's employees in SEIU-
5 represented classifications reported to work.

6 7. However, on January 17, 2019, five (5) of these eight (8) court reporters walked
7 off the job.

8 8. On January 17, 2019, at approximately 3:20 p.m., counsel for the Court, Suzanne
9 Price, called the General Counsel of the California Public Employment Relations Board
10 ("PERB"), Felix De La Torre, and left a voicemail notifying him that the Court would be filing
11 this day, with the Fresno Superior Court, an ex parte application for a TRO against the strike in
12 order that the Court have a sufficient number of court reporters to provide essential services
13 during the strike. Ms. Price's office also served PERB electronically with the Court's TRO
14 papers.

15 9. The Court has forty-three (43) authorized judges and six (6) court commissioners.
16 It operates in the following locations:

17 a. Main Courthouse: located at 1100 Van Ness, Fresno, California, houses
18 judges' chambers, twenty-eight (28) courtrooms, and administrative offices, including but not
19 limited to, the Office of the Jury Commissioner, Interpreter Services, Court Reporter Services,
20 and Criminal, Juvenile Dependency, and the ACTION Center, a one-stop center for litigants.

21 b. B.F. Sisk Courthouse: located at 1130 O Street, Fresno, California, houses
22 judges' chambers, fifteen (15) courtrooms, and certain non-judicial administrative offices,
23 including, but not limited to, the Civil, Family Law, Family Support and Probate Clerk's Offices.

24 c. Juvenile Delinquency Courthouse: located at 3333 East American Avenue,
25 Fresno, California, houses judges' chambers, four (4) courtrooms, and certain non-judicial
26 administrative offices, including but not limited to, the Juvenile Delinquency Clerk's Office.
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1 d. M Street Courthouse: located at 317 Tuolumne Street, Fresno California,
2 houses judges' chambers, five (5) courtrooms, and certain non-judicial administrative offices,
3 including but not limited to, the Traffic Clerk's Office.

4 e. North Jail Annex Courts: located at 1225 'M' Street, Fresno, California
5 houses judges' chambers and two (2) courtrooms. One courtroom, department 96, is currently
6 being used to process all felony arraignments in which the defendant is in custody.

7 f. Archives Division: located at 1963 "E" Street, Fresno, California, houses
8 certain non-judicial administrative offices including, but not limited to the Clerk's Office and the
9 Court Records Warehouse Facility.

10 10. The Court operates approximately thirty-eight (38) calendars daily in its fifty-two
11 (52) courtrooms Court wide. On a 12-month basis between 2017 and 2018, the Court heard an
12 average of four hundred and ninety-six (496) felony cases per (court) day.¹ In this same time
13 period, the Court heard an average of thirty-one (31) felony arraignments per day. In this same
14 12-month period, the Court's Juvenile Delinquency/Dependency departments, combined, heard
15 between two hundred and forty-seven (247) and four hundred and ninety (490) cases per (court)
16 day. All of these matters require the presence of a California certified court reporter. In
17 addition, under Lanterman-Petris-Short ("LPS") Act relating to conservatorships for the
18 treatment, supervision and placement of a gravely disabled person, when an LPS conservatee
19 demands a trial on the issue of grave disability, Welfare and Institutions Code, section 5350
20 requires that the trial commence within ten (10) days of the date of the demand. The Court has
21 between 5 – 20 LPS hearings per week, and between 4 – 5 LPS trials per week. Court reporters
22 are required for these proceedings.

23 11. For the weeks of January 14 and January 22, 2019, the Court has calendared, or
24 expects proceedings on, the essential matters set forth in Exhibit D to the Declaration of Sheran
25 Morton, filed herewith. These are matters that must be heard in these weeks to prevent imminent
26

27 _____
28 ¹ The 12-month basis was determined based on cases heard between August 1, 2017 and August 1, 2018.

1 harm to public health and safety. All of these matters require a California certified court
2 reporter. By law, electronic recording is not permitted for these proceedings.

3 Matters will be consolidated to limit the number of court reporters required for these
4 essential functions. Specifically:

5 a. One Judge will be hearing and triaging felony in-custody arraignments at the
6 North Annex Jail. This Judge will need one (1) court reporter to be assigned to the North Annex
7 Jail to cover these matters;

8 b. Two Judges will hear at the Main Courthouse cases in which the defendant is on
9 bond, time-not-waived arraignments, and all other felony cases where there is no stipulation to
10 proceed without a court reporter. The Court will require one (1) court reporter to be assigned to
11 the Main Courthouse to cover these matters;

12 c. The Court has two (2) felony trials that are ongoing and require two (2) court
13 reporters to cover these trials at the Main Courthouse;

14 d. The Court will need to hear juvenile delinquency and juvenile dependency cases
15 in compliance with the statutory deadlines, as well as mental health capacity and LPS hearings
16 and trials in compliance with statutory deadlines. The Court will require two (2) court reporters
17 to be assigned to the Juvenile Delinquency Courthouse and the Main Courthouse, as needed
18 throughout the day, to cover these essential matters;

19 e. The Court will also need to hear civil law family matters that would otherwise
20 pose a threat to public health and safety, such as domestic violence and termination of parental
21 rights matters. There are five (5) family law departments. The Court will need one (1) court
22 reporter to be assigned to such matters, who will circulate as needed among these departments
23 located at the B.F. Sisk Courthouse; and,

24 f. Finally, the Court is required to hear felony arraignments and preliminary
25 hearings in felony criminal domestic violence matters. Two Judges will hear these matters the
26 weeks of January 14 and January 22 at the Main Courthouse and will require one (1) court
27 reporter to cover these matters at the Main Courthouse.

1 g. The Court requires flexibility to reassign these eight (8) reporters between and
2 among the above designated locations in order to be able to provide essential services to the
3 public.

4 12. The Court cannot timely administer justice in certain criminal and civil matters
5 without a minimum number of court reporters. The Court has contacted numerous court reporter
6 agencies and independent contractor court reporters to secure California certified court reporters
7 for work during the strike and has not been able to secure contractor reporters to work during the
8 strike.

9 13. The Court must follow the laws establishing deadlines for taking judicial action in
10 certain matters, including, but not limited to, Penal Code sections 825, 859b, 1049.5, 1050, and
11 1382 and Welfare and Institutions Code sections 315, 632, 637, 657, and 5334. If deadlines are
12 not met, the consequences may include dismissal of criminal complaints resulting in the release
13 of those the County has charged as committing crimes punishable under the Penal Code.

14 14. The Court also resolves issues concerning child placement in cases of alleged
15 child abuse and other custody matters. The failure to provide these services could result in the
16 failure to timely process these matters, thereby jeopardizing the health and safety of the children
17 at issue.

18 15. The Court resolves placement and release issues regarding detention of juveniles
19 accused of crimes. The failure to provide these services could result in the continued detention
20 of juveniles, delay in proper placement and treatment, as well as release of juveniles accused of
21 committing crimes.

22 16. The Court resolves disputes about the incarceration of persons accused of crimes,
23 level of bail and whether to release accused persons on their own recognizance. The failure to
24 provide these services could result in the inappropriate release of persons from jail, thus posing a
25 threat to public health and safety.

26 17. In light of applicable statutes of limitations, if complaints cannot be timely filed,
27 individuals may be denied legal recourse to resolve disputes.

1 18. The Court must hold hearings on mental health competency matters. A person
2 certified to be held involuntarily in a mental health facility beyond seventy-two (72) hours may
3 petition the Court to be released. The law requires the Court to schedule a capacity hearing
4 within twenty-four (24) hours of the filing of a petition. Welfare and Institutions Code, section
5 5334. As a result of the strike, the Court cannot meet the timelines for competency proceedings.
6 These hearings must be expedited to ensure the health and safety of persons with mental health
7 problems, and to ensure the public health and safety.

8 19. The Court must hold hearings relating to conservatorships under the Lanterman-
9 Petris-Short (“LPS”) Act. When an LPS conservatee demands a trial on the issue of grave
10 disability, a trial must commence within ten (10) days of the date of the demand. Welfare and
11 Institutions Code, Section 5350. The Court has between 5 – 20 LPS hearings per week and
12 between 4 – 5 LPS trials per week. Court reporters are required for these proceedings. As a
13 result of the strike, the Court cannot meet the timelines for LPS trials. These trials must be
14 expedited to ensure the health and safety of persons with grave disabilities, and to ensure the
15 public health and safety.

16 20. The Court must also hold hearings relating to domestic violence, contempt, and
17 termination of parental rights. These matters cannot be decided within statutorily mandated
18 timelines without court reporters.

19 21. The strike against the Court is unlawful under the common law because it hinders,
20 delays, and interferes with the Court’s duties and obligations to administer justice and to provide
21 essential services. This work stoppage will result in the shut down of Court operations; cause
22 irreparable and serious injury, damage and expense to the Court and to the public at large; pose
23 an imminent threat to public health and safety; and will continue to pose such threat unless
24 restrained and enjoined immediately by order of this Reviewing Court.

1 22. The Court has no adequate remedy at law for said injury, damage and expense
2 and there is no way by which the Court can rectify the harm done and the injury, damage and
3 expense caused, unless and until Defendant's conduct is enjoined and restrained by order of this
4 Reviewing Court.

5 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

6 1. That this Reviewing Court grant, *ex parte*, a Temporary Restraining Order against
7 Defendant, its agents, servants, members, and representatives enjoining their strike or other
8 concerted activity, or enjoining Defendant from withholding labor from the Court, to the extent
9 that it poses imminent harm to public health and safety;

10 2. That this Reviewing Court issue an Order to Show Cause to Defendant, directing
11 it to appear before the Reviewing Court to show cause why it should not be preliminarily and,
12 thereafter, permanently enjoined from strike activity to the extent that it poses imminent harm to
13 public health and safety;

14 3. That the Court recover its costs of suit and attorneys' fees incurred herein; and

15 4. That this Reviewing Court grant such other and further relief as it deems just and
16 proper.

17 Date: January 17, 2019

WILEY PRICE & RADULOVICH, LLP

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19 By: 

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